

EXHIBIT 1

In the Matter Of:
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

1:18-cv-05391-SCJ

JANET THORNTON PH.D

May 22, 2020



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May 22, 2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FAIR FIGHT ACTION, INC.; CARE IN
ACTION, INC.; EBENEZER BAPTIST
CHURCH OF ATLANTA, GEORGIA, INC.;
BACONTON MISSIONARY BAPTIST
CHURCH, INC.; VIRGINIA-HIGHLAND
CHURCH, INC.; and THE SIXTH
EPISCOPAL DISTRICT, INC.,

Plaintiffs,

CIVIL ACTION NO.:
1:18-cv-05391-SCJ

vs.

BRAD RAFFENSPERGER, in his
official capacity as Secretary
of State of the State of
Georgia and as Chair of the
State Election Board of Georgia;
REBECCA N. SULLIVAN, DAVID J.
WORLEY, and SETH HARP, in their
official capacities as members
of the STATE ELECTION BOARD;
and STATE ELECTION BOARD,

Defendants.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF JANET THORNTON, Ph.D.
Appearing Remotely Via Videoconference from
Leon County, Tallahassee, Florida 32308

Taken By Counsel for Plaintiffs
(Pages 1-93)

Friday, May 22, 2020
10:03 a.m. - 2:11 p.m.

HELD REMOTELY
VIA VIDEOCONFERENCE

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1 Stenographically Reported By:
2 Jennifer Figueroa, RPR, CLR, FPR
3 Notary Public, State of Florida at Large
4 Appearing Remotely from Hillsborough County, Florida
Esquire Deposition Solutions - Tampa Office
Phone - 813.221.2535, 800.838.2814
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6
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17 On Behalf of the Plaintiffs

18
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22 On Behalf of the Defendants

23
24 ALSO PRESENT:

25 GEORGE ELLIS, VIDEOGRAPHER

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1 Videoconference deposition taken before
2 Jennifer Figueroa, Registered Professional Reporter and
3 Notary Public in and for the State of Florida at Large,
4 in the above cause.

5 * * * * *

6 THE VIDEOGRAPHER: I will now start the
7 recording. We are now on the record. The time is
8 now 10:03 a.m. Eastern Standard Time on May 22nd,
9 2020. This begins the videoconference deposition
10 of Dr. Janet Thornton taken in the matter of Fair
11 Fight Action, Incorporated, et al., versus Brad
12 Raffensperger, et al., filed in the United States
13 District Court for the Northern Division [sic] of
14 Georgia, Atlanta Division, case number which is
15 1:18-cv-05391-SCJ.

16 My name is George Ellis. I'm your remote
17 videographer today. The court reporter is Jennifer
18 Figueroa. We are representing Esquire Deposition
19 Solutions. As a courtesy will everyone who is not
20 speaking please mute your audio and please remember
21 to unmute your audio when you are ready to speak.

22 Counsel, will you please state your name and
23 who you represent, after which the court reporter
24 will swear in the witness.

25 MS. EDMONDSON: Elizabeth Edmondson of

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1 Jenner & Block for plaintiffs.

2 MS. JOHNSON: Tassity Johnson of
3 Jenner & Block for plaintiffs.

4 MS. BRYAN: This is Leslie Bryan,
5 Lawrence & Bundy for plaintiffs.

6 MR. BELINFANTE: This is Josh Belinfante of
7 the Robbins firm for defendants.

8 THE COURT REPORTER: Okay. The attorneys
9 participating in this deposition acknowledge that
10 I, the court reporter, am not present with the
11 witness and that I will be reporting the
12 proceedings and administering the oath remotely.
13 This arrangement is pursuant to the Florida Supreme
14 Court Administrative Order No. AOSC20-23. The
15 parties and their counsel consent to this
16 arrangement and waive any objection to this manner
17 of reporting.

18 Please indicate your agreement by stating your
19 name and your agreement on the record, starting
20 with plaintiffs' counsel.

21 MS. EDMONDSON: Elizabeth Edmondson. I agree.

22 MS. JOHNSON: Tassity Johnson. I agree.

23 MR. BRYAN: Leslie Bryan. I agree.

24 MR. BELINFANTE: Josh Belinfante. I agree.

25 THE COURT REPORTER: Okay. Dr. Thornton,

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1 could you please raise your right hand for me?

2 Do you swear or affirm that the testimony
3 you're about to give will be the truth, the whole
4 truth, and nothing but the truth?

5 THE WITNESS: Yes.

6 THE COURT REPORTER: And I just want to make
7 sure you are currently located at Tallahassee,
8 Florida, with a ZIP code of 32308?

9 THE WITNESS: Yes.

10 THE COURT REPORTER: Thank you.

11 Ms. Edmondson, you may proceed.

12 THEREUPON,

13 JANET THORNTON, Ph.D.,
14 having been first duly sworn or affirmed, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. EDMONDSON:

18 Q. Good morning, Dr. Thornton.

19 A. Good morning.

20 Q. Dr. Thornton, you've been deposed before.

21 Correct?

22 A. Yes.

23 Q. Approximately how many times?

24 A. I don't know.

25 Q. Have you ever done this over video before?

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1 A. No.

2 Q. So that is a first. So while I'm sure you're
3 familiar with the procedures for being deposed, I'm
4 going to focus on a few that may be particularly
5 relevant today. Of course the court reporter can only
6 take down verbal answers and the court reporter can only
7 hear one person at a time. So we'll need to make sure
8 not to talk over each other. Understood?

9 A. Yes.

10 Q. And that's going to be especially challenging
11 since we're doing this in this very bizarre remote
12 setup.

13 Of course your attorney, Mr. Belinfante, may
14 object to one of my questions. So please give him a
15 chance to interpose an objection before responding;
16 unless he instructs you not to answer, however, please
17 go ahead and answer the question afterwards.
18 Understood?

19 A. Yes.

20 Q. If you'd like to take a break at any moment,
21 please just let me know and we can go ahead and take a
22 break as long as a question is not pending, and we'll
23 plan to take a break about every hour or so. Okay?

24 A. Okay.

25 Q. And if there's any question I ask that is

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1 confusing or vague or you just don't understand, please
2 let me know, and I will try to clarify; but if you don't
3 say anything, I will assume you understand the question.

4 With that, Dr. Thornton, is there any reason
5 you may not be able to testify truthfully and accurately
6 today?

7 A. I don't believe so.

8 Q. How did you prepare for your deposition
9 today?

10 A. I reviewed my reports.

11 Q. Only your reports or any other documents?

12 A. I reviewed Dr. Herron's reports in parts -- in
13 part.

14 Q. And did you meet with attorneys for defendants
15 to prepare for this deposition?

16 A. I did not meet with them. I had a brief -- I
17 had a phone call.

18 Q. I should have realized nobody's meeting with
19 anybody at this point.

20 Okay. I'm going to ask you a few questions
21 about your educational and professional background. I'm
22 not going to go into your educational background in any
23 detail, but if you'd like to have your CV in front of
24 you, which I think may be what you're doing right now,
25 we can go ahead and mark your report, your rebuttal

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1 report, as Exhibit 1, and your CV is at Appendix A.

2 (Exhibit 1 will be marked for identification
3 and attached to the transcript once received by the
4 reporter.)

5 BY MS. EDMONDSON:

6 Q. I take it you prepared this report, this
7 Exhibit 1?

8 A. Yes.

9 Q. Who assisted you in preparing it, if anyone?

10 A. Dr. Carrie Amidon, and an analyst, Michael
11 Testa, both of whom worked under my direction.

12 Q. And you're currently a managing director at
13 Berkeley Research Group. Correct?

14 A. Yes.

15 Q. And are the two people you mentioned,
16 Dr. Amidon and Mr. Testa, also at Berkeley Research
17 Group?

18 A. Yes.

19 Q. At a high level can you tell us what is the
20 focus of your work at BRG?

21 A. I manage projects. I compare statistical
22 analyses and manage a group of people who work under my
23 direction in preparing various analyses on numerous
24 different projects.

25 Q. And would it be fair to say a focus of your

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1 work at BRG is labor and employment issues?

2 A. That is one of them, yes.

3 Q. And was that also the case at ERS Group where
4 you were employed previously?

5 A. Yes.

6 Q. And can you tell us what the other primary
7 focus is of your work in terms of subject matter or
8 industry are besides labor and employment?

9 A. I worked on a number of matters involving
10 credit and lending, and I have prepared various analyses
11 involving questions involving voting rights. There may
12 be some other areas, but those would be some of the
13 primary areas.

14 Q. And your resume states that as far as labor
15 and employment goes you have prepared economic and
16 statistical analyses involving employment discrimination
17 claims. Can you elaborate a little bit on what those
18 statistical analyses might entail?

19 A. Sure. So I'm asked to, for example, conduct
20 analyses that look at questions of equal pay regarding
21 gender, and race and ethnicity among other demographic
22 groups; both in terms of questions that are raised in
23 terms of compensation, discrimination where it's
24 litigation, as well as I'm retained by companies to --
25 and other entities to analyze their compensation

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1 decisions to determine if there are disparities among
2 various groups so they can then investigate.

3 In addition I've been asked to examine -- you
4 know, more recently I've been asked to analyze
5 termination and reduction in force and furloughs for
6 organizations given the current economic climate. And
7 additionally both in terms of proactively as well as in
8 terms of involving litigation or other inquiries,
9 questions on claims of hiring, promotion, as well as
10 termination decisions. So I'm looking at decisions and
11 constructing analyses to determine whether or not
12 there's disparate impact with respect to a particular
13 group after controlling all those factors.

14 Q. So setting aside your consulting work for
15 companies and focusing only on the work that's been in a
16 litigation context, have you ever provided an analysis
17 of the type you've described for a plaintiff bringing an
18 employment discrimination claim?

19 A. Yes.

20 Q. On approximately how many occasions,
21 ballpark?

22 A. I don't know.

23 Q. Do you think it would be more than 5?

24 A. There's probably a good chance of that.

25 Q. More than 20?

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1 A. Probably not.

2 Q. And have you provided an analysis of this type
3 for a defendant defending against an employment
4 discrimination claim?

5 A. I've been retained by defendants in these
6 sorts of claims, yes.

7 Q. And on how many -- approximately how many
8 occasions?

9 A. I don't know.

10 Q. Again, do you think it's more than 5?

11 A. Probably, yes.

12 Q. But less than 20?

13 A. I don't know because sometimes one is retained
14 but it doesn't involve testimony.

15 Q. Understood. I'm asking about times where it's
16 in the context of a litigation even if it doesn't
17 ultimately result in testimony.

18 A. I don't know. Going back through my career, I
19 don't know how many times I've been retained.

20 Q. Okay.

21 A. By either party, for that matter.

22 Q. Okay. Now I'd like to turn to the work you've
23 done on voting-rights issues, which is another category
24 you mentioned. In terms of the time you spend, about
25 how much of your work at BRG is focused on voting-rights

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1 issues in one way or another?

2 A. I don't know. There are months where I'm not
3 working on voting-rights matters and other months where
4 it's a larger percentage. It varies month to month.

5 Q. Would you say that it's a smaller percentage
6 of your work than the employment-discrimination
7 issues?

8 A. It would depend on the period of time. Since
9 coming to BRG there have been times when it's been a
10 larger portion, you know, over 50 percent; and other
11 times not. This is a difficult question to answer.

12 Q. Sure. I understand.

13 And then the other category you mentioned was
14 analyses dealing with credit and lending. Would you say
15 that that is more or less than the time you spend on
16 voting-rights issues?

17 A. Currently less.

18 Q. Okay. And your resume mentions that you have
19 previously provided expert testimony on voting-rights
20 issues. Have you published any papers on voting-rights
21 issues?

22 A. No.

23 Q. Have you given any academic presentations on
24 voting-rights issues?

25 A. I don't believe so.

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1 Q. Have you served as a paid or unpaid consultant
2 outside of a litigation context on any voting-rights
3 issues in any capacity?

4 A. No.

5 Q. Have you ever given any training or other more
6 practical instruction on voting-rights issues?

7 A. No.

8 Q. And your resume references that your previous
9 testimony on voting-rights issues included analysis of
10 voter ID match rates and voting patterns among
11 demographic groups. Are there other voting-rights
12 issues that you have provided testimony on?

13 THE WITNESS: I believe my video is freezing
14 up.

15 MS. EDMONDSON: It looks that way to me too.
16 Should we go off the record for a moment?

17 THE WITNESS: I don't know what I'm supposed
18 to do.

19 THE COURT REPORTER: Would you like to go off
20 the record, Counsel?

21 THE VIDEOGRAPHER: Off the record. The time
22 is 10:18.

23 (Recess from 10:18 a.m. to 10:33 a.m.)

24 THE VIDEOGRAPHER: We are back on the record.
25 The time is 10:33.

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1 BY MS. EDMONDSON:

2 Q. Dr. Thornton, you can set aside the CV part of
3 your report for now because now I'd like to switch to
4 asking you about your findings.

5 In Paragraph 17 of your report you stated that
6 you were asked -- I'll let you turn to that page. You
7 stated that you were asked by counsel for the State to
8 review the report of plaintiffs' expert, Dr. Herron, to
9 determine if his assertions regarding the closures and
10 movement of polling places adversely impacted
11 African-American voters. That statement appears to be
12 missing a word. Is it fair to say that you were asked
13 to determine if his assertions were accurate?

14 A. I believe so.

15 Q. And did counsel for the State ask you to do
16 any -- to opine on any other topics?

17 A. No. They asked me to review his report
18 calculation.

19 Q. In Paragraph 18 you also talk about your
20 understanding of certain of the allegations in the
21 complaint in this matter. Did you undertake in your
22 report to analyze the accuracy of these allegations in
23 the complaint referenced in Paragraph 18?

24 A. Only to the extent that I was -- to some
25 extent -- the allegation that I describe in Paragraph 18

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1 is to some extent addressed in my review of Dr. Herron's
2 report.

3 Q. And as part of your work in this matter did
4 you review the entirety of the complaint?

5 A. I likely did back when I received it.

6 Q. In Paragraph 19 you provide a summary of key
7 findings, I think there are 10 of them. Were there any
8 other findings, less key, I suppose, that you made as a
9 result of your review of Dr. Herron's report?

10 A. As I recall what I described here is -- are
11 the key findings. There could be more in-depth or
12 subfindings within these, but these were the -- but they
13 would perhaps fall in through these.

14 THE COURT REPORTER: Doctor, could you please
15 speak up a little bit? I'm having a hard time
16 hearing you.

17 THE WITNESS: Sure.

18 THE COURT REPORTER: Thank you.

19 THE WITNESS: Sure. I apologize. I'm moving
20 my phone.

21 THE COURT REPORTER: Thank you.

22 BY MS. EDMONDSON:

23 Q. And is it fair to say to the extent you have
24 subfindings those are also included in either your
25 original report or your supplemental report?

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1 A. I think so. You know, when I looked at the
2 data, when I look at the results, the underlying
3 information, there are pieces that I may not have
4 described but they would fall under the category. So I
5 may -- I could have perhaps elaborated more; but in
6 general they're there, but I could perhaps have
7 described in more detail.

8 Q. And were there any analyses that you undertook
9 that did not lead to any findings? So separate analyses
10 from those described in your report?

11 A. No, other than reviewing -- you know,
12 reviewing the underlying information that fed into these
13 calculations. So there could have been something more
14 county-specific that I would have looked at, but would
15 not change my findings. They would perhaps elaborate on
16 them.

17 Q. But there are no extra tables or graphs or
18 anything else you created but did not end up using in
19 your report. Is that correct?

20 A. Not that I recall.

21 Q. Okay. If you would turn to Appendix B of your
22 report which is on Page 29 of the PDF in my version, so
23 at the very, very end, this is your list of materials
24 relied upon. Did you rely on any other materials, such
25 as data or studies, other than those listed here?

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1 A. I don't believe so. The only question I
2 cannot recall is Dr. Herron relied on numerous data
3 sets, and I cannot recall if he produced those data sets
4 or once we received his report and we saw that there
5 were data sets that he did not provide, we may have
6 requested those; but otherwise, there would not have
7 been anything additional. They would have been
8 presumably the same databases that he used because we,
9 of course, ran his programs to see if we could match up
10 his table.

11 Q. And following up on that if you turn back to
12 Paragraph 20 of the body of your report, and I'll let
13 you turn back, you state that you "relied upon the
14 programming logic that Dr. Herron produced on March 4th,
15 2020. His code was modified in order to generate his
16 summary results by county as reported below."

17 Can you just describe for us in a little more
18 detail what you did with the code, how you modified it
19 in order to provide the results on a county-level basis?

20 A. Sure. So we're obviously running the code on
21 our computers rather than Dr. Herron's computer or his
22 analyst, so we would have needed to modify his logic to
23 run the code on our database. Additionally, when we ran
24 his code, as I recall, there were a few fields that he
25 had truncated. So we would have, you know, modified the

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1 code to, you know, read in the data properly. There
2 were also a few files that he did not produce. It ended
3 up that those files were not necessary to generate the
4 table.

5 So once we were able to run his code -- for
6 example, for Table 3, we would have run his code and
7 just verified we matched his percentages. And then once
8 we did that then we would have modified the code to
9 include a -- where we're aggregating by county rather
10 than running it across county as he did. So that would
11 have been in his -- our code, that's what we would have
12 done.

13 Q. Do you recall now which fields were
14 truncated?

15 A. As I recall it would have been in his SQL
16 code, and my recollection is they were code towards the
17 end of the code. I don't remember offhand. It's been a
18 while.

19 Q. Sure. Did the truncation of those fields
20 affect the conclusions he drew from the data?

21 A. No. As I recall they -- in terms of the
22 tables that we regenerated, it did not. As I recall
23 what we were focusing on is whether we could match up
24 the percentages that he calculated. I do recall in a
25 few instances there were a few number differences, small

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1 numbers, because we're talking about three -- let's say
2 if we have 3 million registered voters, it could be off
3 by a few, and that could have been due to the
4 truncation.

5 As I recall in his report he describes how
6 there were 18 individuals with races that didn't make
7 sense to him, and so he would have excluded them. When
8 we frequencied the data, it looked fine; but the key
9 here is where the percentage is, did they match. So
10 that was my focus.

11 So were there anomalies? Yes. Did it impact
12 the percentages? No.

13 Q. And so in -- after you modified the code you
14 were able to duplicate the percentages that Dr. Herron
15 had calculated. Is that fair?

16 A. That is correct.

17 Q. Okay. And did you personally modify the code
18 and reproduce the results that Dr. Herron had generated
19 or was that someone working under you?

20 A. It was not me. It was someone who worked
21 under my direction.

22 Q. But you felt comfortable with the process they
23 used and embraced their results, I take it?

24 A. I looked at the code before -- I looked at the
25 code and the percentages and the numbers, and then

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1 similarly when he modified it by county, again, making
2 sure that an aggregate count matched.

3 Q. We can turn to Section II of your report which
4 is still on Page 6. Excuse me. I have a table that is
5 too small for what I am trying to put on it.

6 Dr. Thornton, one of your critiques of
7 Dr. Herron's report is that under Georgia Law Georgia
8 counties and municipalities have the responsibility to
9 determine the polling place within each district and to
10 make the changes of the polling places. Is that
11 correct?

12 A. Yes. My critique is that he provided --
13 prepared -- relied upon aggregated outcome.

14 Q. "Aggregated" meaning aggregated across
15 counties. Is that accurate?

16 A. Yes.

17 Q. And how did you come to the understanding that
18 Georgia counties and municipalities have the
19 responsibilities to determine the polling places within
20 each precinct? What are you relying upon for that?

21 A. When I reviewed his report, based on my
22 understanding in general, I thought it was odd the way
23 he aggregated. And I asked counsel if there was a
24 statute delineating how polling places are determined,
25 and I requested it.

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1 Q. And counsel provided that statute to you?

2 A. Yes.

3 Q. And that's the statute referenced in the
4 report, 21-2-265. Correct?

5 A. Yes. It's referenced in the materials relied
6 upon, uh-huh.

7 Q. You aren't a lawyer. Correct?

8 A. No.

9 Q. You've read the statute though?

10 A. Yes.

11 Q. Have you read to see if there are judicial
12 opinions interpreting the statute?

13 A. No.

14 Q. And so you're not aware of, for example,
15 whether under Georgia law or federal or constitutional
16 election law there might be exceptions to the statute.
17 Correct?

18 MR. BELINFANTE: Object to the form.

19 You can answer.

20 A. I don't know one way or another.

21 BY MS. EDMONDSON:

22 Q. So you don't have an expert opinion --
23 correct? -- that county officials have unfettered
24 authority to make decisions about polling place
25 locations. Correct?

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1 MR. BELINFANTE: Object to the form.

2 A. I am -- based on -- based on my analysis in
3 terms of my understanding of the statute and the
4 variation by county in these outcomes.

5 BY MS. EDMONDSON:

6 Q. So, Dr. Thornton, is it your opinion that
7 given this statute there could be no meaningful analysis
8 of racial discrepancies and polling place closures at
9 the state level?

10 A. My -- based on my review, it's my opinion that
11 a county-by-county analysis is more useful, more
12 instructive than an overall aggregated outcome; and
13 regardless of a statute, you see tremendous variation
14 from one county to another.

15 Q. So to be clear, even if -- setting the statute
16 aside, you review a statewide analysis here as not
17 useful because of the variation between counties. Is
18 that correct?

19 A. I think it's a combination. One, you have a
20 statute; and two, looking at the data and looking at the
21 variation, there is a substantial variation from county
22 to county. So in statistics when you aggregate outcomes
23 where you have a lot of variation, you can have a
24 misleading outcome and that's what we have here.

25 Q. In statistics are there tools where you have a

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1 great deal of variation in the data to reduce the
2 possibility of a misleading outcome?

3 A. There are ways that you can account for the
4 variation, if that's your question, and that's what I
5 talk about in my report or write about in my report, and
6 in terms of accounting for the variation by county.

7 Q. So it's not the case that you have to just
8 throw up your hands and say that there's no useful
9 analysis that could be done at the statewide level?

10 A. Well, I think in a sense you can look at it by
11 county and then provide statistics that describe the
12 outcomes by county, which is what I've done. So does
13 that give you a statewide look but adjusted for county?
14 Yes, it does. Are there other statistical techniques in
15 terms of inferential statistics, which we don't have
16 here. Dr. Herron hasn't produced inferential
17 statistics. He's provided descriptive statistics. And
18 so as a consequence in reviewing those descriptive
19 statistics what I have done is looked at it by county
20 and then prepared summary statistics that adjust for the
21 county.

22 Q. To be clear, though, you haven't reproduced
23 Dr. Herron's analysis -- each of Dr. Herron's analysis
24 at the state -- at the county-level for each county.
25 Correct? You've looked at a few counties here and there

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1 on an anecdotal basis?

2 A. Actually, that's not correct. So, for
3 example, at Table 3 and at Table 4 I looked at it county
4 by county, and then I summarized what those findings
5 showed.

6 Q. Can you point me to the page of your report
7 that you're referring to for Table 3 and Table 4?

8 A. On Page 13.

9 Q. I see. You're referring to Dr. Herron's
10 Table 3, not your own Table 3. Is that correct?

11 A. That's correct.

12 Q. I see. So you've summarized what the overall
13 count of counties is that fall in one category versus
14 another, but you haven't provided a table listing all of
15 the counties and the results of each county. Is that
16 fair?

17 A. That -- I did not reproduce that, but it is
18 in -- when one runs the --

19 THE COURT REPORTER: I'm sorry, but it is
20 in -- I'm sorry, Doctor. "But it is in" -- what
21 did you say? "One one"?

22 A. What I said is that I did not provide that
23 table as an attachment to the report. When one runs
24 Dr. Herron's code by county we produce an Excel file,
25 just like he does, with those county-by-county results

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1 and it's from those that we then summarize in Paragraph
2 3.

3 BY MS. EDMONDSON:

4 Q. While we're on the topic of county-level
5 decision-making I wanted to look at a paragraph in your
6 rebuttal report for a moment, if you have that handy.

7 MS. EDMONDSON: So let's mark that as Exhibit
8 2 for the record.

9 (Exhibit 2 will be marked for identification
10 and attached to the transcript once received by the
11 reporter.)

12 BY MS. EDMONDSON:

13 Q. For the formalities here, Exhibit 2 is a
14 report that you prepared. Correct?

15 A. Yes.

16 Q. With the assistance of others at BRG who are
17 working under your supervision. Correct?

18 A. That's correct.

19 Q. Okay. If you look at Paragraph 6 and 7,
20 excuse me, at the beginning of Paragraph 7 you state
21 that "Dr. Herron ignores the racial and partisan makeup
22 of each of the county boards of elections involved in
23 the decisions to move or close polling places."

24 Can you elaborate on the relevance in your
25 view of the partisan makeup of county boards of

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1 elections to your analysis?

2 A. Well, in Dr. Herron's report he provides us
3 monolithic statistics across counties. He doesn't
4 adjust for the decision-making of the boards of
5 elections that then result in closures of polling
6 places, changes in polling places, increasing in polling
7 places, and it's those individuals who are making the
8 decisions. So Dr. Herron is looking at it as a
9 monolithic statistic without making any kind of an
10 adjustment for those decisions that obviously results in
11 the outcomes that he is analyzing.

12 So there's no -- essentially what I'm saying
13 is there's no control for county.

14 Q. And looking just at a specific county, if
15 we're just looking at one county, how would the partisan
16 makeup of a county board of elections affect your
17 analysis of that county's decision-making? What would
18 you do to adjust -- how would you use that information
19 of the partisan makeup to adjust the results or adjust
20 your analysis?

21 A. But my statement here is a description of a
22 few examples when I looked at a number of the websites
23 to see that -- what was happening; and my point is that,
24 again, Dr. Herron is looking at it as a monolithic
25 statistic without making an adjustment. So my point is

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1 in this description is you have each county making these
2 decisions and in a vacuum of just aggregating it all up
3 you're ignoring those decisions.

4 So my point is that the decision-makers may be
5 basically a equal percentage of the different parties.
6 So again in that light it comes back to what were the
7 reasons for a closure increasing the polling placing or
8 making no changes to the polling places. And so those
9 are the decision-makers.

10 Q. And so is it your view that if a county
11 commission is bipartisan then it's impossible that there
12 is a racially disparate impact in the closing of polling
13 places?

14 A. No, that's not what I'm saying. I'm saying
15 that these are the decision-makers and so one needs to
16 look at what were the reasons for a closure or a move or
17 an increase in the number of polling places, and these
18 are the decision-makers.

19 So you could have an outcome with equal
20 representation and you may or may not have -- and here I
21 want to be clear, disparate impact is not being
22 measured. There are no statistical tests, no
23 inferences, but you could have a difference in a
24 proportion.

25 And so in that instance the question is, well,

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1 why? Why is there a difference? Is it because there
2 needed to be more polling places in particular areas
3 because of population increases? Was there a decrease
4 in the population? What are the reasons? A site that
5 no longer existed? I described some of them in my
6 report and without learning that information one would
7 not know if you have a difference in the percentage, if
8 it is -- race is what Dr. Herron measures or is it
9 something else?

10 Q. And is it fair, then, that your focus was
11 looking at the reason, whether -- excuse me. Withdrawn.
12 Let me restart the question.

13 Is it fair then that your focus was in
14 considering whether race was explicitly a reason why
15 counties chose to close particular polling places?

16 MR. BELINFANTE: Object to form.

17 A. What -- what I am looking at is that
18 Dr. Herron provided statistics generally that are across
19 county, a monolithic set of statistics, and the only
20 factor that he's measuring is race. And what I am
21 looking at is, is there potential for there being
22 factors that could be correlated with race and it is
23 both factors and then not race as he's measured it. So
24 when I say he hasn't adjusted, he hasn't adjusted for
25 any factors. He has just looked at generally statewide

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1 statistics and looked at race.

2 MS. EDMONDSON: So let's go off the record for
3 a moment.

4 MR. BELINFANTE: Okay.

5 THE VIDEOGRAPHER: Off the record. The time
6 is 11:03.

7 (Recess from 11:03 a.m. to 11:11 a.m.)

8 THE VIDEOGRAPHER: We are back on the record.
9 The time is 11:11.

10 BY MS. EDMONDSON:

11 Q. Dr. Herron [sic], if you could turn to Section
12 II of your report, Paragraphs 21 and 22; and I'm going
13 to look in particular at Paragraph 22, but feel free to
14 take a moment to read those over to yourself. I know
15 it's been a while since you wrote them.

16 So in Paragraph 22 you state that "While
17 Dr. Herron depicts variation from county to county, he
18 does not provide by county the equivalent of his overall
19 state statistics that form the basis of his
20 conclusions." And then at the end of the paragraph you
21 say, "As a consequence, Dr. Herron has mis-leadingly
22 masked these county differences through his use of
23 state-wide statistics."

24 And one of the examples you give of
25 information that was misleadingly masked was that

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1 between 2014 and 2018, 36 percent of the counties did
2 not close polling places. And I think you may have
3 anticipated where I am going. Are you getting
4 Dr. Herron's report?

5 A. Well, actually, I thought you were asking me
6 about Exhibit 2 so I'm catching up with you. I
7 apologize.

8 Q. Oh, I'm sorry. Take a moment then, please.
9 I'm sorry. I'm back on Exhibit 1. Take your time. So
10 I was asking about Paragraphs 21 and 22 in Exhibit 1.

11 A. Okay.

12 Q. So to recap, one of the county differences
13 that you say was "mis-leadingly masked" by Dr. Herron's
14 analysis is that between 2014 and 2018 36 percent of the
15 counties did not close polling places. Do you see that
16 in Paragraph 22?

17 A. Yes.

18 MS. EDMONDSON: Okay. So now if we can mark
19 Dr. Herron's report as Exhibit 3, Dr. Herron's
20 first report.

21 (Exhibit 3 will be marked for identification
22 and attached to the transcript once received by the
23 reporter.)

24 BY MS. EDMONDSON:

25 Q. Dr. Horton, I'll ask you to confirm that this

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1 is the report from Dr. Herron that you reviewed?

2 A. Yes.

3 Q. Okay. If you could turn to Paragraph 115 of
4 his report. Are you there?

5 A. I did -- I am.

6 Q. And if you'll see there, Dr. Herron notes that
7 58 counties in the state did not close any polling
8 places between the 2014 and 2018 election. Is it fair
9 to say that those 58 counties are the 36 percent of the
10 159 counties that you referenced in your report?

11 A. Yes.

12 Q. And so looking at this paragraph Dr. Herron
13 did not -- actually included that information in his
14 report. Correct?

15 A. Yes, he did; but the point of Paragraph 22 is
16 that when you look in detail at those overall statistics
17 you have, they're influenced by these counties that did
18 not close -- or did not make any changes.

19 Q. But it is correct that Dr. Herron included in
20 his report the fact that 58 counties did not have any
21 changes -- excuse me, did not close any polling places
22 between 2014 and 2018. Correct?

23 A. He makes that point. My Paragraph 22, the
24 first sentence says, "While Dr. Herron depicts variation
25 by county by county, he does not provide by county the

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1 equivalent of his overall state statistics that form the
2 basis of his conclusions." In other words, he doesn't
3 take the equivalent of the statewide and prepare them by
4 county. So certainly he included the number without a
5 closure, but he does not provide, for example, Table 3
6 by county. That's what I'm describing.

7 Q. But he does include data by county for the
8 percentage of polling places closed; for example, if you
9 look at Figure 2 of his report, which is on the next
10 page.

11 A. Again, what I am talking about here in
12 Paragraph 2 is that the overall state statistics that he
13 relies upon are looking at racial composition, racial
14 differences; and what I am describing here is he doesn't
15 provide those same statistics that are the focus of the
16 report and he asserts are the focus of his report county
17 by county.

18 Q. But it's certainly possible to see from his
19 report that -- and not something he hid or masked or any
20 way -- that there's a great deal of variation between
21 counties and how many polling places they closed.
22 That's clear from his report. Correct?

23 A. He provides the polling places closed by
24 county, yes; but the purpose as I understand of his
25 report is to examine racial composition, that's the

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1 focus. And those same comparisons that he makes --
2 they're not "analyses," they're "comparisons" that he
3 makes -- that form his conclusions he does not provide
4 by county, and it's that overall aggregate outcome masks
5 the individual variation by county. That's what I'm
6 describing.

7 And in my report I clearly state what he
8 provided by county, but he doesn't provide the same
9 statistics that he -- or comparisons that he provides by
10 race, and it's by failing to do that he's masking -- the
11 overall statistics mask what the individual counties
12 look like.

13 Q. Going back to something you said there, I want
14 to make sure that we're using the same terminology. I
15 think you mentioned something that you said it's not an
16 analysis, it's a comparison, and I may have been using
17 "analysis" as a layperson. Does "analysis" have a
18 specific meaning to you that's different from its
19 ordinary meaning in normal conversation?

20 MR. BELINFANTE: Object to form.

21 A. When I use the word "analysis" I am generally
22 referring to statistical analyses from which you can
23 draw inferences. These are -- what Dr. Herron generates
24 are descriptive statistics or descriptive comparisons,
25 they're not analyses. You cannot draw statistical

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1 inferences from Dr. Herron's comparisons.

2 BY MS. EDMONDSON:

3 Q. Can you elaborate on why not for a moment?

4 A. He did not provide a statistical test.

5 Q. Okay. I will try not to use the word
6 "analysis" then; but if I do, you can assume I mean it
7 in the general sense of analyzing something rather than
8 a statistical analysis in particular or at least clarify
9 what I mean by the question. Okay?

10 A. Okay.

11 Q. If we go on to Paragraph 23 of your report,
12 your first report, Exhibit 1, you state that "Because
13 Dr. Herron does not examine the reasons for polling
14 place closures he has," quote, "'inflated' his
15 statistics regarding closure rates." So I want to speak
16 for a moment about what you mean by "closure rates,"
17 what you understand a closure to be here. And elsewhere
18 in your report you put closure in quotation marks, so I
19 want to understand what counts as a closure.

20 I take it that you're not arguing that places
21 like Meadowview Elementary that you highlighted in your
22 report were actually open and used for voting in the
23 2018 election. Correct?

24 A. That's correct, it was not one of the -- it
25 was not a polling place and it wasn't in existence then.

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1 Q. Okay. So the reason it's a -- something might
2 be a "closure," in quotation marks, is not because you
3 have some suspicion that it didn't actually close or
4 become unavailable. Is that correct?

5 A. That's correct. The reason for my use of the
6 word "closure" is I measured closure as Dr. Herron did.
7 He called that a "closure." And as a consequence I put
8 it in quotes because to your point, it wasn't in
9 existence; and if a place isn't in existence to call it
10 a "closure," you know, it's really not a closure, it's
11 just not available. And so because Dr. Herron called
12 these "closures," I used the quotation marks to
13 distinguish.

14 Q. So if you had been undertaking this analysis
15 yourself in the first instance, what do you think would
16 be appropriate to categorize as a closure? What would
17 count as sort of a true closure for the purposes of this
18 analysis?

19 A. Well, as I recall there are 459, quote,
20 "closures" as Dr. Herron has measured; and for those I
21 would want to know for each the reason. And as I stated
22 in my second report it would take more than a Google
23 search. And so what I would want to know is, is it a
24 closure because it just doesn't exist? Is it a closure
25 because it -- the site no longer wanted to serve as a

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1 polling place? I would want to know is it a closure
2 because the building exists but it can no longer
3 function? For example, it may have deteriorated, it
4 isn't safe. I would want to know for each what is the
5 reason.

6 And then from those determine -- for each of
7 those reasons is there -- is there a higher proportion,
8 for example, Caucasian or higher proportion African
9 American registered voters at each of those sites? In
10 other words, what are the reasons for each and then what
11 is the racial makeup of those registered voters. And
12 without knowing each of those reasons, I don't -- I
13 don't know the reasons, that's what I would want to know
14 so that you could then filter out what would have --
15 what is the -- to the extent there is a difference by
16 race, is it because of a particular reason or not.

17 Q. So is it fair to say that the categories you
18 listed -- that a polling place might not exist; that it
19 might exist but no longer want to serve as a polling
20 place; or is dilapidated or unable to function as a
21 polling place -- that for your purposes those would be
22 irrelevant to the analysis of whether there was a
23 disparate racial -- I don't want to use the term
24 "disparate impact" because you alluded to it having a
25 specific meaning, but is that irrelevant to the decision

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1 of whether -- actually, I'm sorry. Let me withdraw that
2 whole question because I got myself a little tied up in
3 knots there.

4 My question is basically, if you remove those
5 categories of polling places that are unavailable for
6 one reason or another, would it be your intent only to
7 look at the remaining polling places that were closed as
8 a result of an entirely voluntary decision on the part
9 of the county officials that those would be the only
10 relevant polling places to look at?

11 A. I would want to know if there -- if it is
12 correlated with the racial makeup in terms of the
13 reason. In terms of all the reasons, based on the list
14 that you've given, those are perhaps some of the reasons
15 that are basically out of the control of the county
16 board of elections. There may be others that I don't --
17 am not aware of or haven't thought of, but if one wants
18 to know the decisioning, then I would want to
19 distinguish between those that are basically out of the
20 control of the county in terms of the closure -- I
21 should say, quote, "closure."

22 Q. So if you were doing this in the first
23 instance, if I understand correctly, that you would look
24 at each category of reason for closure as best as you
25 could figure it out, and then look at the racial impact

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1 for each of those categories or the racial makeup for
2 each of those categories. Is that fair?

3 A. Yes, and I'd want to do it by county because
4 the racial makeup of each county is different.

5 Q. If you were going to do that analysis how
6 would you undertake to see whether a particular county's
7 stated reason for closure might be pretextual? For
8 example, would you have any concern that a county might
9 take a position that a polling place was dilapidated
10 even though it could perhaps still serve as a polling
11 place?

12 MR. BELINFANTE: Object to the form.

13 A. I don't -- I would want to just first look to
14 see what the statistics showed to see if what the racial
15 differences are by county within each of those
16 categories.

17 BY MS. EDMONDSON:

18 Q. So when you say that Dr. Herron's statistics
19 regarding quote/unquote "closure rates" are inflated, is
20 it fair to say that you're not disagreeing with his
21 calculation of closure rates given the definition of
22 closure that he's using? You agree with that given his
23 definition of closure?

24 A. Based on his definition of closure that
25 includes sites that no longer existed or could no longer

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1 serve for various reasons, he's calculated 459; but in
2 terms of what one would think of as a "closure," meaning
3 you have a site and the decision is made "we're no
4 longer going to use it," and there isn't a reason that
5 I, for example, described amongst those, then it would
6 be -- the 459 would be inflated, and therefore the rate
7 would be inflated.

8 Q. So is it fair to say you don't disagree that
9 there are 459 closures under his definition of
10 "closure." Correct?

11 A. As best I -- as best I recall.

12 Q. But your contention instead is that he's using
13 the wrong definition of "closure" for any kind of legal
14 relevance here. Is that fair?

15 A. Well, I'm not an attorney, but in terms of
16 from a usefulness of a statistic -- and here we're
17 looking at -- or what he is looking at is an overall
18 statistic -- to the extent that he is including sites
19 that were closed that are outside of the control of the
20 county board of elections, then I don't know how useful
21 those statistics are.

22 Q. How useful they are to determine what?

23 A. How useful they are to determine, based on his
24 overall statistics or on a county bilevel, whether or
25 not there is a difference in -- by race as he's

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1 calculated it.

2 Q. I think a minute ago you posited that there
3 might be correlations on the basis of race for some of
4 the other categories why a polling place might be
5 closed; for example, that it might not exist. Is that
6 fair?

7 A. I think I would describe it differently.

8 Q. That's fine.

9 A. What I said is that what we don't know is if
10 the -- if the reasons for closures, if there's variation
11 by race in the reasons, we don't know. To the extent
12 that there is a different by race and the reasons within
13 a county, then the question then becomes if you
14 controlled for those reasons would you then have a race
15 effect.

16 So in Dr. Herron's analyses -- and I'm using
17 your word "analysis" -- in his comparisons he's looking
18 at all 459 closures and asking the question, "Is there a
19 difference?" He's not filtering out, "Is it race?" as
20 he's measured it, or "Is it something correlated with
21 race?" and we don't know that. And he's making the
22 assumption in a second report as he recalled -- if I
23 recall, he's assuming that it's uniform by race, but he
24 hasn't tested that. And so as a researcher one would
25 want to know in terms of the distributions that he's

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1 calculated is it race or is it something correlated with
2 race.

3 Q. So in looking at the -- you give three
4 examples of polling places that existed in 2014 but were
5 torn down or otherwise unavailable to serve as polling
6 sites; that's at 24 to 2016 of your report. Sorry, 24
7 to 26, pardon me.

8 How did you locate these three examples that
9 you've included in your report?

10 A. Well, I make clear that -- or if -- this isn't
11 a scientific sample. I wanted to illustrate his
12 definition of "closure," what, you know, it included.
13 So I focused on Fulton and DeKalb County. You have -- I
14 believe as I recall those were the counties with the
15 most closures.

16 So I just asked an analyst to go and look at
17 Google in the maps and just see if there were places in
18 a county that were polling places that were closed where
19 you could clearly see that they were demolished. I
20 said, "Just look to see if you can find a couple of them
21 to illustrate the point." It was by no means to be a
22 survey or a statistical sampling. Given the small
23 numbers of polling places within a county, closures, to
24 do a scientific sample in all likelihood you'd actually
25 have to sample all 459. If you wanted to have a

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1 scientific study or sampling, as Dr. Herron alludes to,
2 you need to do a stratified sample and the numbers are
3 just so small you'd have to find out the reason for each
4 of the 459.

5 So to answer your question, I focused on those
6 two counties because I knew there would be quite a few,
7 I knew the numbers, and just asked the researcher to see
8 if they could find a few to illustrate the point.

9 Q. And because it was an illustration you didn't
10 ask the researcher, I take it, to also include examples
11 where the researcher couldn't locate any alternative
12 reason why the polling place became unavailable.

13 Correct?

14 A. There's no way to find that out through Google
15 search, maybe Google Maps. All we could do is look to
16 see, "Is this a place? Is it there? Is it open?"

17 Q. Okay.

18 A. You can't find through Google Maps each of the
19 reasons.

20 Q. Just circling back for a moment, in your focus
21 on the decision-making of the counties, is it fair to
22 say that by -- that your focus is whether the decision
23 to close a polling place could have been motivated by
24 racial animus on the part of the county officials
25 charged with making the decisions?

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1 A. Well, Dr. Herron's comparisons are examining
2 race across the state and in those statistics he's
3 including closures that are outside of the control of
4 the county boards of election. So a more appropriate
5 analysis is to determine after controlling for the
6 factors -- you know, determining what the factors are
7 for each, and then determining is there a race effect as
8 he has measured it by county.

9 MS. EDMONDSON: Can I ask the court reporter
10 to read back that response, please?

11 THE COURT REPORTER: Yes, ma'am.

12 "Answer: Well, Dr. Herron's comparisons are
13 examining race across the state and in those
14 statistics he's including closures that are outside
15 of the control of the county boards of election.
16 So a more appropriate analysis is to determine
17 after controlling for the factors -- you know,
18 determining what the factors are for each, and then
19 determining is there a race effect as he has
20 measured it by county."

21 BY MS. EDMONDSON:

22 Q. Okay. If you could go to Section III of your
23 report. We're looking at Paragraph 27. I'm looking at
24 the third sentence, you see there, "Given that voter
25 participation for the 2016 presidential election was

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1 higher than the 2018 mid-term election, it is likely
2 that voters whose polling place changed prior to the
3 2016 election and who then voted in 2016 would have
4 known of their new polling place at least two years
5 prior to the 2018 election."

6 So I take it from that sentence that you're of
7 the view that one reason why changes in polling places
8 might affect voter turnout is that voters might not know
9 of their new polling place before the election.

10 Correct?

11 A. It's a possibility, yes.

12 Q. Are there any other reasons why closing of
13 polling places might affect further turnout?

14 A. I don't know all the reasons for voter
15 turnout. Could you ask me the question again?

16 Q. Sure. Is there any reason why closing a
17 polling place -- sorry. Withdrawn.

18 You mentioned one reason why closing a polling
19 place might affect voter turnout, which is that voters
20 might not know where to go on election day. What I am
21 asking is whether you can think of any other reasons why
22 closing a polling place might affect voter turnout?

23 A. Well, you could close a polling place or
24 move -- and then move it, which would be included among
25 Dr. Herron's reasons, and make it in a more convenient

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1 place for registered voters and it could then perhaps
2 increase. So, you know, again, there are reasons that
3 could increase or decrease voter turnout from a closure.

4 Q. And conversely, if you were to close a polling
5 place and the new polling place was farther away, that
6 might decrease the likelihood that a particular voter
7 might show up to vote on election day. Is that fair?

8 A. May or may not.

9 Q. Or if -- I'm sorry. Go ahead.

10 A. It could be further away, but in terms of
11 getting there, you know, ease of transportation, all of
12 those reasons that, you know, Dr. Herron didn't analyze,
13 I didn't look at it, there's a whole set of reasons that
14 could influence the location. It could be better
15 parking, for example, could influence it.

16 Q. So it's fair to say that there are a whole set
17 of reasons, other than not knowing where your new
18 polling place is, that could affect voter turnout from
19 closing a polling place; either increasing it as you're
20 mentioning or decreasing it. Correct?

21 A. That's correct.

22 Q. And you acknowledge that 30 percent of
23 counties did have a reduction in the total number of
24 polling places from 2014 to 2018. Correct? I'm taking
25 that statistic from Paragraph 22 of your report, if I've

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1 understood it correctly.

2 A. Yes, I believe 30 percent had a reduction.

3 Q. Several of those counties in the 30 percent of
4 counties closed more than one polling place. Correct?

5 A. I believe so.

6 Q. Okay. So would you agree that it stands to
7 reason that at least in those counties that had a
8 reduction in the total number of polling places that
9 closures of polling places meant that some people had to
10 travel farther to those?

11 A. I don't know.

12 Q. You think that's possible that they could have
13 reduced the total number of polling places in a county
14 and no one had to travel farther to vote?

15 A. There's likely to be some portion, but I don't
16 know specifics.

17 Q. You don't know what portion, but there's
18 likely to be some portion?

19 A. I have no way of knowing one way or another.

20 Q. You didn't undertake that analysis?

21 A. No. I was responding to Dr. Herron's report.

22 Q. Okay.

23 A. Or I should say I was reviewing Dr. Herron's
24 report.

25 Q. If we look at Paragraph 29 of your report, as

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1 I read it this paragraph includes a critique that
2 Dr. Herron's analysis of voters who had their polling
3 places closed is flawed because he didn't in this
4 analysis of closures remove voters who moved, and as a
5 consequence their polling place would have potentially
6 changed regardless of the closure.

7 Is that fair that that's the critique you're
8 setting forth here?

9 A. Yes. Here he's including as I recall the
10 registered voters who moved.

11 Q. And in your view that's particularly
12 problematic because according to census data a higher
13 percentage of African Americans moved versus Caucasians
14 moved. Is that accurate?

15 A. Well, regardless of the racial composition, if
16 you're -- if you moved, then there is a higher
17 probability of a change in your polling place. So to
18 look at the impact of closures as Dr. Herron has done,
19 he would have included individuals who may or may not
20 have been impacted by that closure.

21 Q. It wouldn't be that 100 percent of registered
22 voters who moved who would be affected. Right? Because
23 some people might have moved within the same precinct.
24 Correct?

25 A. Certainly.

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1 Q. And those people who moved within the same
2 precinct would be affected by a precinct closure, taking
3 his definition of "closure"?

4 A. That's correct.

5 Q. And I take it you don't have any statistics
6 and perhaps there aren't any available on what
7 percentage of Georgians who moved or African-American
8 Georgians who moved within a precinct?

9 A. I do not know that.

10 Q. Dr. Thornton, is it your position that when a
11 polling place closes within a precinct that closure has
12 no effect on voters moving into that precinct?

13 MR. BELINFANTE: I'm sorry. Could you repeat
14 the question?

15 MS. EDMONDSON: I'm going to ask the court
16 reporter to read it back because I'm not sure I
17 can.

18 MR. BELINFANTE: Okay. Thanks.

19 THE COURT REPORTER: Yes, sir.

20 "Dr. Thornton, is it your position that when a
21 polling place closes within a precinct that closure
22 has no effect on voters moving into that precinct?"

23 MR. BELINFANTE: Object to form.

24 You can answer.

25 A. It -- I want to make sure I understand the

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1 question. Are you asking me if a precinct closed -- or,
2 pardon me, a polling place has closed and so there is a
3 new polling place, and then someone moves into that area
4 so then his or her polling place is the new polling
5 place, would the closure have an influence? Is that the
6 question?

7 BY MS. EDMONDSON:

8 Q. Yes.

9 A. Well, if I wasn't aware of the prior polling
10 place and I moved into a new -- I've moved in and so
11 I'm -- now I'm aware of my new polling place, I don't
12 know what the impact of the closed polling place would
13 be on the individual. I -- I don't know.

14 Q. But if the -- looking at the total number of
15 polling places as we did just a moment ago, if the new
16 polling place was less convenient than the old polling
17 place had been, that might mean that the person moving
18 into this precinct might be less likely to vote than if
19 the polling place had never been closed. Is that
20 fair?

21 A. It's a possibility, keeping in mind that the
22 individual may not have been aware of the prior polling
23 place so if he or she chose to vote, then they would be
24 aware, based on your example, of the new polling place.
25 An individual may choose to vote for all hosts of

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1 reasons.

2 Q. So this critique -- I want to understand the
3 scope of this critique about including movers in the
4 analysis of closures. Dr. Herron performed three
5 different methodologies of comparing or addressing
6 polling place closures by race. Correct? He looked at
7 racially homogenous black groups from the census, he
8 looked at voter file comparisons, and then he looked at
9 black majority precincts. That's a fair description of
10 his three different methodologies broadly stated?

11 A. I need to have his report in front of me to
12 answer that.

13 Q. Sure. Please feel free to look. I will tell
14 you I believe it is at -- if you look at Paragraph 107.

15 A. Okay.

16 Q. So looking at Paragraph 107 is it accurate
17 that Dr. Herron purported at least to look at the issue
18 of polling place closures in Georgia by race in three
19 different ways: looking at census block groups;
20 comparison of various voter files; and then, three,
21 analysis of majority black polling places in Georgia?

22 A. Yes, as described in Paragraph 107.

23 Q. Okay. And your criticism about the inclusion
24 of registered voters who moved I want to understand
25 which of Dr. Herron's assessments that criticism applies

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1 to? Does it apply to all three assessments or does it
2 apply only to the comparison of the voter files?

3 A. It has -- it is mainly my criticism is in
4 relation to Table 3 because the question becomes if one
5 was to have removed those individuals, how would it have
6 changed the distribution.

7 Q. And you did an analysis of that for how it
8 would change Table 3. Correct?

9 A. No, I did not. What I said is that it
10 would -- it would -- the -- providing the Bureau of
11 Census data is to show that that distribution of movers
12 is different by race; and consequently, you would expect
13 the distribution that Dr. Herron produced at Table 3
14 would also change.

15 Q. But you concluded that that difference in the
16 rate of movement would more than offset the difference
17 that he reported in Table 3. Correct?

18 A. You would expect it to perhaps do that.

19 Q. So you're not sure that it would offset that
20 difference, but you would expect that it would offset
21 that difference?

22 A. What I'm saying is that it more than offsets;
23 and based on his other charts, one can see that when he
24 removed nonmovers the distribution does change. It
25 becomes less African American.

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1 Q. All I'm trying to ask right now is, did you do
2 the analysis to know that it off -- that the rate of
3 moving offsets the difference -- the .12 difference he
4 found; or are you saying that given the numbers, you
5 would expect, perhaps strongly, that it would offset
6 that difference?

7 A. What I'm saying is that I haven't tested it;
8 but based on the Bureau of Census data we know that
9 African Americans move at a higher rate, and therefore
10 there is the potential that it would offset the
11 difference. And from his other charts you can see that
12 the percentage of African Americans when you remove
13 nonmovers does go down. I should say "when you remove
14 the movers." I apologize.

15 Q. Understood. No problem.

16 MS. EDMONDSON: We've been going about another
17 hour. Should we not take another quick break?

18 THE WITNESS: Yes. May I ask a question?

19 MS. EDMONDSON: Sure. Although perhaps we
20 should go off the record first if it's a logistical
21 question.

22 THE VIDEOGRAPHER: Going off the record. The
23 time is 11:59.

24 (Recess from 11:59 a.m. to 12:07 p.m.)

25 THE VIDEOGRAPHER: Okay. We are back on the

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1 record. The time is 12:07.

2 BY MS. EDMONDSON:

3 Q. Hello, again. If we can turn to Paragraph 30
4 of your report. Paragraph 30 includes the statement
5 that "Among the 101 counties with at least one closure,
6 54 (or 53.5%) have a higher proportion of Caucasian
7 registered voters with a closure compared to the closure
8 of African-American registered voters."

9 My first question is just a clarification. I
10 take it you mean compared to the proportion of African
11 American registered voters with a closure. Is that
12 fair?

13 A. Yes. So to be clear, for each county with a
14 closure, counting the percentage of among African
15 Americans of their proportion with a closure as measured
16 by Dr. Herron as compared to among Caucasian the
17 proportion of Caucasian registered voters with a closure
18 as identified by Dr. Herron.

19 Q. Understood. I just wanted to clarify that it
20 wasn't compared to the proportion of African American
21 registered voters in the county more generally, that it
22 also relates to the closures.

23 What data does this analysis in Paragraph 30
24 use?

25 A. It's the data -- it's the data -- same data

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1 relied upon by Dr. Herron in his preparation of Table 3.
2 So it's essentially taking Table 3 of Dr. Herron's --
3 the code from his Table 3 and running it by county.

4 Q. And so Table 3 is the comparison Dr. Herron
5 does on the basis of comparing the 2014 voter file by
6 race group to the 2018 voter file by race group.
7 Correct?

8 A. Table 3 is looking at polling place closure
9 rates by race.

10 Q. But based on a comparison of the 2014 and 2018
11 voter file. Correct?

12 A. Yes.

13 Q. So for this analysis why did you focus on the
14 101 counties with at least one closure as opposed to the
15 total number of counties?

16 A. Well, because for the remaining you would have
17 had a zero percent closure rate for both African
18 Americans and Caucasians, so there's no comparison.

19 Q. Just because the two rates are the same?

20 A. Yeah, there's no information to glean.

21 Q. Did you look to see whether the rates of
22 closures were the same for any other counties; whether
23 there happened to be, for example, a 5 percent closure
24 rate for African Americans and a 5 percent closure rate
25 for Caucasians and exclude those counties from the

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1 analysis too?

2 A. No, because in here we're looking at closures;
3 and so if the rate of closure is the same, meaning there
4 are no closure decisions, there's nothing to compare.
5 On the other hand, there is variation from county to
6 county and we're looking then at where decisions were
7 made to close -- using Dr. Herron's measure of
8 "closure" -- when you had a decision, what is the
9 closure rate by race.

10 Q. Did you analyze at all the racial composition
11 or racial demographics of the 58 counties that had no
12 closures?

13 A. No. I know that there was variations.

14 Q. So you did analyze the racial demographics of
15 those 58 counties at least enough to know that there was
16 some variation in their racial demographics?

17 A. When I looked at the output that we generate
18 for Table 3 by county, you can see that there's
19 variation.

20 Q. So I may be misunderstanding you. I'm asking
21 you generally -- not with respect to closures -- just
22 what the racial demographics are of the 58 counties that
23 did not have any closures for everyone in that county?

24 A. Well, the information from -- that you
25 generate from Table 3 that we produced you can see if

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1 there's diversity amongst the 159 counties and included
2 in those are the 58.

3 Q. Okay. So from that information you looked
4 enough at that to know, for example, that the 58
5 counties were not -- that had no closures were not the
6 58 most African-American counties in the state, for
7 example. There was diversity among them?

8 A. There's diversity.

9 Q. Okay. But you don't recall what the -- you
10 didn't create a table or otherwise undertake a
11 systematic review of the demographics of those
12 counties?

13 A. No. I just saw that there was diversity, but
14 the focus is where the county for which there was a
15 decision made to close a polling place as defined by
16 Dr. Herron.

17 Q. And this annual -- this review or comparison
18 that you did in Paragraph 30, this is essentially
19 counting counties. Correct? It doesn't take into
20 account the degree to which a particular county might
21 have more Caucasian registered voters with a closure
22 compared to African American registered voters with a
23 closure?

24 A. No, it's counting -- it's showing that -- it's
25 showing that those overall statistics when you bring it

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1 down to a county-by-county comparison where you have
2 closures, you have about the same proportion of county
3 having a -- in about half the counties it's a higher
4 proportion Caucasian and another little less than half
5 you have African American -- higher closure rates among
6 African Americans.

7 Q. But if a particular county had -- let's take
8 an example where one county had -- County A had 1
9 percent more Caucasians than African Americans affected
10 by closures, and County B had 20 percent more Caucasians
11 than African Americans affected by closures. Each of
12 these would just show up in this analysis as the same --
13 right? -- as a county that had more Caucasian than
14 African Americans affected by closures. Is that fair?

15 A. It's counting which ones are higher and which
16 one's lower.

17 Q. But not taking into account the degree of
18 difference?

19 A. No, it -- it's counting.

20 Q. Then you reference the fact that if Bibb
21 County is removed from Dr. Herron's analysis, the
22 polling place for closure rate for black and white
23 voters flips.

24 How did you come to choose to remove Bibb
25 County from the test data?

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1 A. So when I was looking at the individual lines
2 for each county I noticed that, you know, four counties
3 comprised about 30 percent of the population of African
4 American and registered voters. So I wanted to look at
5 a county proofing that was smaller than that proofing.
6 And when I looked at Bibb's, it's the next county down
7 that list with the highest -- higher numbers of
8 closures.

9 So the more populous counties, like Fulton,
10 DeKalb, Cobb, Gwinnett -- I believe I'm forgetting one,
11 I apologize, but in the Atlanta area -- they comprise
12 about a third of the registered voters, and they have
13 varying degrees of closures. And so relative to those
14 counties Bibb is a smaller county and it had a higher
15 number of closures relative to some of those counties in
16 that Atlanta area.

17 So I was curious. This is a county that had
18 more closures, what would happen if you removed it? So
19 when I say it's smaller, it's smaller relative to those
20 that have -- are, you know, far more populous, and it
21 had -- Bibb had a higher closure rate, relatively
22 speaking. So I wanted to take a look to see what's the
23 influence.

24 In statistics we have something called
25 "Simpson's paradox." So here Dr. Herron has one

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1 aggregated outcome, and you can have an aggregated
2 outcome mask the individual variation.

3 And so what I'm illustrating here is how you
4 can have a lot of variation county by county and that's
5 why it's important to look at it county by county; and
6 to illustrate if you remove this one county that is
7 relative to this larger counties, has a -- it's smaller
8 but has a relatively higher number of closures, what
9 would the influence be?

10 Q. And so in choosing Bibb County one of the
11 reasons you chose Bibb County was that it did have a
12 relatively high closure rate. Is that fair?

13 A. It had numerically more of the closures.

14 Q. Did you -- do you know how Bibb County
15 compares to other counties in Georgia in terms of its --
16 the percentage of its population that is African
17 American?

18 A. As I recall -- I don't remember specifically,
19 but I recall it being perhaps -- perhaps more African
20 American relative to some counties.

21 Q. After you had done the analysis with Bibb
22 County did you do a similar analysis removing any other
23 counties from the analysis; or did you do a review of
24 removing any other counties from the calculations?

25 A. No. I described my -- my logic of why I chose

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1 Bibb and -- relative to those other counties, and it was
2 to illustrate how having an aggregate outcome as
3 Dr. Herron had used can result in a misleading outcome
4 because county by county there is a lot of variation.

5 Q. There's also a lot of variation in Georgia
6 about racial demographics by county. Correct?

7 A. Sure, and that's one reason why you'd want to
8 look at it county by county.

9 Q. Elaborate on that, please.

10 A. Well, again, Dr. Herron has this aggregated
11 outcome and you do not know based on what he's depicted
12 in his chart -- for example, on Table 3 -- is it
13 influenced by one county? Is it influenced by all the
14 counties? In other words, do you have the outcome that
15 he shows which is -- I apologize, I have to go back to
16 his --

17 Q. No problem.

18 A. -- he calculates at Table 3 a .12
19 percentage-point difference. If you looked at it by
20 county, would you come to that same conclusion or a
21 similar conclusion if you looked at it county by county;
22 or is it that there's a particular county or group of
23 counties that are influencing that outcome? And that's
24 why it's relevant to look at it county by county.

25 Q. Okay. Let's do one more thing before lunch,

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1 if that works. Let's move on to ... one moment, please.

2 MS. EDMONDSON: Actually, I think if we can
3 break now it will be a little bit more efficient,
4 if that suits everybody? Is that okay?

5 THE VIDEOGRAPHER: We're going off the record.
6 The time is 12:24.

7 (Recess from 12:24 p.m. to 1:02 p.m.)

8 (Ms. Bryan is no longer present.)

9 THE VIDEOGRAPHER: We are back on the record.
10 The time is 1:02.

11 BY MS. EDMONDSON:

12 Q. Good afternoon, Dr. Thornton.

13 A. Good afternoon.

14 Q. Dr. Thornton, now I want to move on to
15 Paragraphs 31 and 32 of your report. And these
16 paragraphs address Tables 4 through 6 of Dr. Herron's
17 report. And I just want to confirm tables -- this --
18 these two paragraphs represent a critique of
19 Dr. Herron's analysis of how polling place closures
20 affected African Americans if you focus on the issue of
21 how majority black polling places were affected. Is
22 that your understanding as well?

23 A. Yes. It's an aggregate analysis based on his
24 measurement of -- his definition of African-American
25 polling places.

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1 Q. Okay. And is it fair to say here that the
2 analysis you performed or the review you did is similar
3 to the review we just talked about before lunch, that
4 you removed those polling places -- excuse me, those
5 counties that had no closures and then counted how many
6 of the remaining counties had more -- counted the
7 closure rate in the remaining counties?

8 A. It's looking at a subset of the 101 because I
9 did not want to include instances in which you did not
10 have at least one majority African-American polling
11 place using his threshold.

12 Q. Okay. And is it fair to say that the same
13 reasons you gave a moment ago about why it's fair to
14 leave out the counties with no closures would also apply
15 to this analysis?

16 A. Well, I did not want to mislead by including
17 counties without a majority African-American polling
18 place because if you -- if I included those then the
19 Caucasian closure rate would have been higher than the
20 53.5 percent that I calculated here.

21 Q. Okay. I understand that, I think. Is it fair
22 to say, then, that your -- the only criticism in your
23 report of Tables 4 through 6 in Dr. Herron's report is
24 that it's inappropriate to aggregate the data across
25 counties and that it's more appropriate to look at it on

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1 a county-by-county basis?

2 A. My criticism is that he does not -- that he
3 masks the variation and he calculates the higher closure
4 rate based on his threshold that includes groups that
5 for which there were not any decisions made and
6 includes -- and so in this instance you're not -- he did
7 not adjust for the county variation.

8 Q. And that's a criticism you're making I
9 understand in Paragraphs 31 and 32. My question is, I
10 don't believe that there are any other criticisms of
11 Tables 4 through 6 in your report? And if you disagree
12 with that, I'd like you to tell me.

13 A. Well, I believe that there's an overarching
14 point that I make regarding closures that we -- you
15 asked me about earlier today; and that is, Dr. Herron is
16 including closures that are out of the control of the
17 county boards of elections. So to the extent that those
18 closures are correlated in some way with race, then his
19 outcomes and his conclusions could be different.

20 Q. But if we accept for the moment Dr. Herron's
21 definition of "closures" for the purposes of discussion,
22 you don't have any quarrel with Dr. Herron's
23 calculations in Tables 4 through 6. Is that fair?

24 A. If you're asking me if arithmetically he has
25 distribute -- calculated in terms of the 459, then

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1 arithmetically I do not know of an error. In terms of
2 his methodology, that's what I'm critiquing overall.

3 Q. And you have essentially two critiques of the
4 methodology. One is the definition of "closure," and
5 one is that you don't think it's appropriate to
6 aggregate across county lines.

7 Are there any other critiques of the
8 methodology that you would offer?

9 A. Well, as I alluded to earlier today and in my
10 report, my first report, is he's not only provided
11 statistics or a few statistics here that are
12 cross-county, but he also has gone from 2004 to 2008 and
13 he doesn't distinguish 2016. And that is an arc -- a
14 point that I've made in general because his entire
15 report is 2014 to 2018.

16 Q. And does that criticism apply to Tables 4
17 through 6 as well as -- I understand that it applies to
18 Table 3. Does it also apply to Tables 4 through 6?

19 A. Certainly.

20 Q. And why is that since Tables 4 through 6 focus
21 on the overall racial makeup of polling places rather
22 than a particular -- looking at a particular voter?

23 A. Well, as I understand what Dr. Herron is
24 attempting to measure is he wants to know if there
25 are -- he is measuring whether there is a difference by

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1 race in closure. And the -- as I understand the issue,
2 it's particularly in relation to what happened in 2018.
3 So as a consequence he's mixing activity that happened
4 between the 2014 midterm and the general election and
5 presidential election in 2016 with the presidential
6 election in 2016 and the 2018 midterm.

7 So the question is, is the pattern that he
8 calculates looking across that four-year time period, is
9 it the same pattern from 2014 to 2016 or 2016 to 2018?
10 And throughout his initial report he did not look at
11 that question because the question is, is there
12 consistency in his statistics in that time period or is
13 there a shift, is there a difference?

14 Q. And in your view what is the proper unit of
15 time to look at this under? Should we look at the
16 differences between a midterm and a presidential
17 election like every two years, every one year, every
18 month? How consistent -- what is the unit across which
19 it must be consistent to be useful?

20 A. Well, the question here is if -- he's combined
21 different activities and different decisions, and so as
22 a consequence -- and what he's done is he's masked the
23 difference between 2014 and 2016, and 2016 and 2018.
24 Why he does -- did that, I don't know.

25 Q. But what do you think is the proper way to do

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1 it? What would answer the question?

2 A. Well, I think it's important to take a look to
3 see if there is a difference. So the proper thing to do
4 is to not make an assumption of grouping it altogether.
5 It's important to see where you have these events --
6 2014, 2016, 2018 -- what changed.

7 Q. So stepping back for a moment, so we've talked
8 about Table 3 of Dr. Herron's report and Tables 4
9 through 6. Other than your overarching criticisms of
10 Dr. Herron's total approach, I don't believe that you've
11 offered any criticisms of his analysis of the census
12 block -- of looking at the issue of race through
13 racially homogenous census blocks. But if that's
14 incorrect, please let me know. That would be his Table
15 2.

16 A. At Paragraph 26 I discuss that Dr. Herron
17 himself testified that "most registered voters in
18 Georgia 'do not live in racially homogeneous census'"
19 group blocks -- "'census block groups,'" pardon me. So
20 as a consequence it raises into question the value of
21 his analysis because he's looking at a very small
22 proportion based on what he testified and one can see
23 that there's quite a range.

24 So at 95 percent racially homogeneous you have
25 a -- pardon me -- so at 95 percent you have a different

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1 conclusion than you do at 99 percent or 100. So it --
2 as expected you're going to have a difference as you
3 go -- become more and more, you know, at 100 percent
4 African American or 100 percent Caucasian.

5 So to his point you're looking at a relatively
6 small proportion of the population of registered voters
7 for me to these categories based on his own testimony;
8 and as I point out, this analysis includes among the
9 closures those polling places that are closed outside of
10 the control of the boards of elections.

11 Q. Did you undertake your own analysis of how
12 many voters in Georgia live in racially homogeneous
13 census block groups?

14 A. No, I did not.

15 Q. Did you add up the numbers in Table 2 to see
16 the total number of voters according to Dr. Herron's
17 data that live in racially homogeneous block groups?

18 A. I did not. I replicated his table.

19 Q. So you have no quarrel with the individual
20 rows of data in his table as far as an arithmetic
21 matter? I understand you might have criticisms of the
22 methodology that led him to identify those as relevant.

23 A. If you're asking me if his code did what it
24 was asked to do and it arithmetically matches the
25 output, then it matches.

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1 Q. So I'm not going to ask you to do the math or
2 the input right here, but looking at the numbers now
3 would it surprise you if I represented to you that
4 according to these numbers it's approximately 2.5
5 million people in - voters in Georgia who live in
6 racially homogeneous census block groups?

7 A. I would disagree with that calculation because
8 the individual in -- in, for example, cut off 2 --
9 pardon me, cut off the -- those at 100 are included in
10 the 99, 98, 97, 96, and 95 categories. Those in 99 are
11 included in 98, 97, and 96 and 95 cutoff, so on and so
12 forth. So 96 is included in the 95, so that would be
13 incorrect.

14 Q. I see.

15 Okay. So if we move on to Section IV of your
16 report, if you look at paragraph thirty -- it's
17 essentially Paragraphs 33 through 35, but I'm going to
18 focus on Paragraph 35 and the table.

19 So if you look at Paragraph 35, like the
20 earlier discussions we talked about, in this analysis
21 you removed the 31 counties who had no changes to their
22 polling places between 2014 and 2018. And I take it
23 that your reasoning for that choice is the same or
24 similar as what you offered about the 58 counties that
25 had no polling place closures earlier in the report,

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1 that those counties without any changes to their polling
2 places are not relevant to this inquiry. Is that fair?

3 A. That is correct. There's no decision made --
4 there were no decisions made by the board -- county
5 board of elections that influenced the placement of
6 polling places.

7 Q. Okay. But here in Table 1 you're doing
8 something a little different than you did when
9 discussing the polling place closures because you're not
10 just counting the number of counties that have more --
11 higher percentage of African-American closures versus
12 Caucasian closures. You're actually recalculating the
13 percents across the counties. Correct?

14 A. Yes. I'm looking at the -- Dr. Herron's Table
15 9 and removing from his Table 9 the 31 counties.

16 Q. And so here can you explain why it's
17 appropriate when you're recalculating Table 9 to remove
18 the 31 counties that did not have any changes to their
19 polling places?

20 A. Well, the 31 counties, regardless of their
21 racial composition, there's no decisioning, nothing was
22 changed. No new polling places. No closures. No moved
23 polling places. So there's no decision because then
24 races -- Dr. Herron is looking at a distribution, it has
25 no -- no -- there's not contributing from those

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1 counties.

2 So here I'm looking at those counties where a
3 decision was made regarding a new polling place, a
4 change in polling place, a closure altogether without a
5 replacement and looking at that question because these
6 are the decisions, these are the counties for which
7 decisions were made.

8 Q. But if you look at the column in your table
9 you have the breakdown of voters who did not have a new
10 polling place by Caucasian, African American, et cetera.
11 But there are voters who lacked a new polling place in
12 the 31 counties that you omitted. Correct?

13 A. Can you say that again? I could not hear
14 that.

15 Q. Sure. So there's a column in your Table 1
16 that refers to the racial distribution of those voters
17 who did not have a new polling place. That's the "Not
18 New Place" column in your Table 1. Correct?

19 A. Yes.

20 Q. But there are registered voters in the 31
21 counties -- in fact, all the registered voters in the 31
22 counties -- who did not have a change to their voting
23 place who aren't included in this table. Correct?

24 A. And they're not included because those
25 counties did not have any in the "New Place." They're

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1 only in the "Not New Place." No decisioning was being
2 made. So by including them it inflates the "Not New"
3 percentages.

4 Q. And since removing the 31 counties increases
5 the relative percentage of white voters with changes
6 versus black voters, we can assume as a matter of math
7 that the 31 counties with no changes are
8 disproportionately white compared to the rest of Georgia.
9 Correct?

10 A. Slightly.

11 Q. But definitely disproportionately white, even
12 if "slightly"?

13 A. By a -- if I recall -- hold on. By about 1
14 percentage point.

15 Q. But enough to make the difference that you
16 think is important to change Table 9 into your Table 1.
17 Correct?

18 A. Well, first I think it's important to
19 recognize that the percentage difference in the
20 distributions changed -- changes were less than a
21 percentage. And so what it shows is, is that when you
22 remove those 31 for which there were no decisions made,
23 that it narrows the difference between Caucasian and
24 African American registered voters and it advantages
25 using -- in the way in which Dr. Herron writes among

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1 those African Americans had a smaller difference in
2 having a new place.

3 Q. As an aside, you referred to counties in which
4 no decisions were made. But a decision not to close a
5 polling place or not to change a polling place could
6 count as a decision. Right?

7 A. Perhaps, but then the question is, did it --
8 was even, you know -- there -- from my perspective from
9 an analysis for those counties there was -- there were
10 no changes, so in those counties the racial composition
11 isn't -- if the county boards of election were making a
12 decision based on race hypothetically, in those counties
13 there were no decisions made. And so from my -- from my
14 review of the data what this shows is again Dr. Herron
15 makes the conclusion aggregating across the counties,
16 yet there are these 31 for which there were no changes.

17 Q. But you don't know, for example, that in the
18 31 counties where no changes were made the boards didn't
19 consider closing or indeed opening additional polling
20 places. Right?

21 A. I don't know one way or another. From my
22 standpoint from looking at the data, they made no
23 changes.

24 Q. But that doesn't necessarily tell you that
25 they weren't faced with or didn't make any decisions

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1 about whether to make a change?

2 A. I don't know one way or another, but they did
3 not make a -- they did not make a change.

4 Q. Okay. If we look at section -- excuse me,
5 Paragraphs 36 and 37, you critique Dr. Herron for
6 failing to consider the influence of the shift toward
7 absentee and early voting in Paragraph 36. In your
8 Table 2 you're only comparing the absentee and early
9 voting from 2014 to 2018. Correct?

10 A. Yes, to be -- because that's the period that
11 Dr. Herron focused on in his report.

12 Q. And you didn't look to see if that rate of
13 change was different between 2014 and 2016, and 2016 and
14 2018. Correct?

15 A. I don't know if I looked at 2016, I may have,
16 or at least looked to see how easily I could pull the
17 data from EABS. However, my focus was to respond to
18 Dr. Herron's comparison of 2014 to 2018.

19 Q. And you focused on the shift to early voting
20 because of a hypothesis that the need and perhaps the
21 supply of polling places may have been lessened and that
22 might have been part of what was driving the closures of
23 polling places in 2018. Is that fair?

24 A. What I am showing is that from an economist
25 standpoint of supply and demand, the usage of early

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1 voting and no-excuse absentee ballots may influence
2 decision makers.

3 Q. But here we're focused on the decisions to
4 close polling places at some point before 2018. So
5 isn't it true that any drop or any drop in in-person
6 voting between 2016 and 2018 could not have been a basis
7 for election officials to close polling places in
8 anticipation of the 2018 election?

9 MR. BELINFANTE: Object to form.

10 A. Well, what -- what we know is that there is --
11 has been a trend in the use of absentee -- no-excuse
12 absentee ballots and in the usage of early voting.

13 BY MS. EDMONDSON:

14 Q. And for the decision-makers who are making
15 decisions about polling place locations for 2018, they
16 would have needed to rely on data from 2014 to 2016 or
17 indeed 2012 to 2014 rather than data right before --
18 from the 2018 election?

19 MR. BELINFANTE: Object to form.

20 A. I don't know what -- I don't know what
21 information they would or would not have relied upon.
22 What this does show is that there is movement; and what
23 I am familiar with in reading literature and looking at
24 statistics, there has been an upward increasing usage of
25 absentee ballots and usage of early voting.

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1 BY MS. EDMONDSON:

2 Q. And for these statistics you're looking on a
3 statewide aggregated basis. Correct?

4 A. Yes, in response to Dr. Herron.

5 Q. Did you look to see if there were geographic
6 differences in the shift or trend toward early and
7 absentee voting among different counties in Georgia?

8 A. No, this is just to say -- this isn't looking
9 at racial composition. It's looking at an overall
10 trend. When one looks at Dr. Herron's statistics on
11 election day polling places, he does not show a
12 difference by race that's adverse to African Americans.
13 And so I wanted to look to see what is the usage.

14 Q. But you didn't look specifically to see if the
15 counties that closed polling places were counties that
16 experienced a trend in the shift toward early and
17 absentee voting. Is that correct?

18 A. That is correct.

19 Q. So we can move on to Section V. In the end of
20 Paragraph 37 you state that voters "who voted early
21 and/or submitted absentee ballots would not be impacted
22 by a change in polling place because early voting places
23 and submitting an absentee ballot have no relationship
24 to the election day polling places of voter. Not clear
25 why Dr. Herron close to include these distributions by

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1 race and ethnicity in his report as they are
2 misleading."

3 So I take it it's your position that a closed
4 or moved polling place could have no effect on a voter's
5 decision to vote early or absentee?

6 A. What I am stating is for the statistic that
7 Dr. Herron is calculating regarding the racial
8 composition or distribution between those who moved and
9 did not move, in terms of those statistics what is
10 relevant are those election day ballots where they're
11 actually going to those polling places.

12 Q. So my question was just a smaller question,
13 which is, is it your position that the fact that a
14 voter's polling place has been closed or moved would
15 have no effect on a voter's decision to vote early or
16 absentee?

17 A. I don't know the rationale for why someone
18 votes with an absentee ballot or decides to vote early.
19 What I am saying is that in terms of the relevance of
20 the polling places they are on election day.

21 Q. So it doesn't seem possible to you that if a
22 voter learned that his or her polling place had been
23 closed that that voter might choose to vote early or
24 absentee rather than vote on election day?

25 A. I suppose it's possible. From Dr. Herron's

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1 information and from the data available one cannot
2 ascertain that.

3 Q. But is it at least possible the shift of some
4 groups to earlier absentee voting in 28 might be the
5 effect of the closure of polling places rather than the
6 cause of the closure of polling places?

7 A. I don't know one way or another. Individuals
8 can choose to vote early or by absentee for his or her
9 own personal reasons.

10 Q. So if we look then at your second report --

11 MS. EDMONDSON: Actually, I think if we can
12 take a short break now that would just let me
13 streamline things. I don't have very much more to
14 go, so I think it will help me streamline things,
15 if that's all right?

16 THE VIDEOGRAPHER: Okay. Off the record. The
17 time is 1:40.

18 (Recess from 1:40 p.m. to 1:51 p.m.)

19 THE VIDEOGRAPHER: We are back on the record.
20 The time is 1:51.

21 BY MS. EDMONDSON:

22 Q. Dr. Herron -- Dr. Herron -- Dr. Thornton,
23 before we broke we were discussing the effect on
24 election day voting of changes in polling place
25 locations.

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1 Your conclusion in your report was that
2 African Americans were the, quote, "least
3 'disenfranchised'" of any other racial ethnic category
4 because they had the least change in election-day
5 turnout by change in polling place. Correct?

6 A. I should have been clearer to say "among those
7 with a known race."

8 THE COURT REPORTER: I'm sorry, "a known"
9 what?

10 A. "Among those with a known race in his table,"
11 in Dr. Herron's Table 12.

12 BY MS. EDMONDSON:

13 Q. In his supplemental report Dr. Herron offered
14 a few reasons why absentee or early voting might not be
15 seen as as good a substitute for election-day voting,
16 and I don't believe you offered any reaction or critique
17 of those reasons, but I wanted to give you an
18 opportunity to do so if you have any.

19 A. I apologize. Could you ask me the question
20 again?

21 Q. Sure. In his supplemental report --

22 MS. EDMONDSON: We can mark that as an
23 exhibit. I don't believe we have yet, actually.

24 We can call that Exhibit 3, I believe?

25 THE COURT REPORTER: 4.

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1 MS. EDMONDSON: 4. Apologies.

2 (Exhibit 4 will be marked for identification
3 and attached to the transcript once received by the
4 reporter.)

5 BY MS. EDMONDSON:

6 Q. In paragraphs approximately 120 to 125
7 Dr. Herron identifies some -- takes the position that
8 not all forms of voting are equal. So I was offering
9 you an opportunity -- I don't believe you offered any
10 critique of that position in your supplemental report,
11 but I wondered if you agreed with that proposition or if
12 you had a critique of it?

13 A. I don't have an opinion one way or another.
14 My understanding is that there is now -- I read an
15 article in which Ms. Abrams was questioned by the AP and
16 she thought that absentee voting is going to be the law
17 of the land, and that she viewed it as the safest and
18 most accessible form of voting.

19 So there seems to be perhaps a disagreement on
20 the usage and the pros and cons of absentee voting in
21 Dr. Herron's opinion versus Ms. Abrams'.

22 Q. Do you recall when you read this article by
23 Ms. Abrams or quoting Ms. Abrams?

24 A. It would have been after I filed my report.
25 But there's been a lot of discussion about the usage of

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1 absentee voting, and I did not address it in my report
2 as there's been -- there's pros and cons.

3 Q. Was it after your supplemental report or after
4 your initial report?

5 A. I believe that it would have been after my --
6 after both reports.

7 Q. And do you recall what publication you read
8 this in?

9 A. It was an Associated Press question and
10 answer.

11 Q. So if it was after your second report is it
12 fair to say it was after the COVID-19 pandemic was fully
13 on the horizon?

14 A. Both of my reports were submitted after it was
15 fully on the horizon.

16 Q. Okay. So do you recall whether Ms. Abrams
17 comments about the safety of absentee voting were made
18 in the context of public health concerns concerning
19 in-person voting?

20 A. I believe as I recall the article there was
21 certainly that, but she also -- as I recall she viewed
22 it as I think, quote, "the safest and most accessible
23 way to vote." And so she was looking at it not only
24 from the standpoint of safety but also accessibility.

25 Q. Do you still have that article handy? Not

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1 necessarily right now, but to provide to your counsel
2 for production.

3 A. If I can find it on the Internet.

4 Q. Okay. Well, after this deposition we'd
5 appreciate it if we could do that so we can mark it as
6 an exhibit after the fact, if possible.

7 If you can turn to your second report. If you
8 look at Paragraph 23 you note that "In addition to the
9 general trend of increased alternative voting, in 2018,
10 African-American voters in particular used early voting
11 polling places at a higher rate."

12 And I take it from the citation that is
13 nationwide and not necessarily in Georgia, your citation
14 there?

15 A. Yes.

16 Q. But the data in your table backs up that that
17 is also true in Georgia for in-person early voting. Is
18 that accurate?

19 A. What I have available for in-person early
20 voting in Georgia is the overall usage. Table 3 allows
21 us -- one to look at the in-person early voting by race
22 and ethnicity.

23 Q. So I think perhaps can you explain then what
24 the numbers in Table 3 represent here? For example, the
25 16.2 for white alone, what does that -- what does that

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1 number mean?

2 A. So among those who voted in the 2018 election,
3 16.2 percent of Caucasians voted early in person.

4 Q. Okay. And 24 percent of Caucasians voted by
5 mail. Is that accurate?

6 A. That's correct.

7 Q. So, Dr. Thornton, if you look at these
8 numbers, while it is true that African Americans had a
9 higher percentage of early voting versus other racial
10 and ethnic groups, isn't it true that they had the
11 lowest percentage of voting by mail of any of the ethnic
12 groups listed here?

13 A. They do; and in the context of Georgia, within
14 Georgia no-excuse absentee mail-in ballots are a
15 relatively small proportion of the overall ballots cast.

16 Q. And this data that you're looking at in
17 Table 3 shows that African Americans have the lowest
18 percentage of alternative voting taking in-person and
19 mail together of any ethnic group that's included.
20 Correct?

21 A. That may be correct but as I testified, in
22 mail is a relatively small proportion of the ballots
23 cast in Georgia. They're mostly as an early ballot,
24 alternative ballots, it's in-person early voting in
25 which you have a higher proportion of African Americans

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1 in that category.

2 Q. Dr. Thornton, we've spent most of our time
3 today focusing on what I would say is the primary
4 critique you offer of Dr. Herron's analysis, which is
5 his decision to look at things on a statewide basis
6 rather than to look at the individual decisions made by
7 county officials. Would you agree that that's
8 essentially the central critique of your report?

9 A. It's one of the central critiques.

10 Q. And you've agreed that you did not provide a
11 county-by-county break down of the reasons why polling
12 places were closed or unavailable. Correct?

13 A. No, neither -- Dr. Herron did not. I raised
14 it as an issue, and he did not do such in his response
15 report.

16 Q. And you've identified a lot of reasons why
17 that would be very difficult to do. Correct? It would
18 require a lot more than a Google search to do.
19 Correct?

20 A. It would take more than a Google search.

21 Q. And is it fair to say that it would be close
22 to impossible to have a comprehensive account of why
23 polling places were closed in each county?

24 MR. BELINFANTE: Object to the form.

25 A. I don't know one way or another, but in order

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1 to assess the statistics -- in order to frame the
2 statistics that Dr. Herron has calculated, one would
3 need to know what those reasons were.

4 BY MS. EDMONDSON:

5 Q. And your reason for thinking that's important
6 is that, as you've cited, the counties have -- you cited
7 a statute to show that the counties are the
8 decision-makers when it comes to shutting down polling
9 places. Correct?

10 A. Counties make the decision regarding
11 polling -- the location and number of polling places;
12 and based on the information -- for example, in
13 Table 3 -- when you look at it county by county there is
14 great variation.

15 Q. But, Dr. Thornton, it's correct, is it not,
16 that elections in Georgia for governor, for senator, and
17 various others, what matters is not the decisions county
18 by county but the overall aggregate percentages by
19 registered voter in the state of Georgia. Correct?

20 MR. BELINFANTE: Object to the form.

21 A. If you're asking me in terms of who is elected
22 for a statewide or a election that is the total ballots
23 that count, yes. To the extent that it is alleged that
24 changes in polling places influence those outcomes, then
25 one would want to know which counties actually could

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1 potentially impact those numbers. So you have included
2 in those numbers statewide ballots cast, counties for
3 which there were no changes or no closures.

4 MS. EDMONDSON: Can we go off the record for a
5 moment?

6 MR. BELINFANTE: Okay.

7 MS. EDMONDSON: Um --

8 THE VIDEOGRAPHER: Just a moment, please.

9 MS. EDMONDSON: I'm sorry.

10 THE VIDEOGRAPHER: Off the record. The time
11 is 2:07.

12 (Recess from 2:07 p.m. to 2:10 p.m.)

13 THE VIDEOGRAPHER: We are back on the record.
14 The time is 2:10.

15 MS. EDMONDSON: Dr. Thornton, thank you very
16 much for appearing today remotely by video, and I
17 have nothing further for you.

18 THE COURT REPORTER: Any cross, Counsel?

19 MR. BELINFANTE: I have no questions.

20 Thank you.

21 THE VIDEOGRAPHER: Okay. This is the
22 videographer. We ask that all participants please
23 stay connected briefly to provide your transcript
24 and video orders, after which I'll close the
25 record.

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1 THE COURT REPORTER: Ms. Edmondson, you're
2 ordering the original, and you need it on a 3-day
3 expedited basis. Is that correct?

4 MS. EDMONDSON: If that is what you've already
5 been told, that sounds fine. I would have to
6 check, but I can check and confirm if that's not
7 the case.

8 THE COURT REPORTER: Did you need a --

9 THE VIDEOGRAPHER: And the video -- oh, sorry.
10 Go ahead.

11 THE COURT REPORTER: Did you need a copy of
12 the transcript --

13 MS. EDMONDSON: Me?

14 THE COURT REPORTER: -- defense counsel?
15 Sorry.

16 MR. BELINFANTE: Yes, please, we would like a
17 copy of the transcript.

18 THE COURT REPORTER: And is your witness going
19 to read or waive?

20 MR. BELINFANTE: She'll read, please.

21 THE VIDEOGRAPHER: Ms. Edmondson, would you
22 like a copy of the video also?

23 MS. EDMONDSON: Let me get back to you about
24 that. I'm not the decision-maker on that question.

25 THE VIDEOGRAPHER: Okay. So because it's an

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1 expedite when I turn this in I'm going to -- let me
2 go off the record.

3 We are now going off the record on May 22nd,
4 2020, at 2:11 p.m. This concludes the
5 videoconference deposition of Dr. Janet Thornton.

6 (The reading and signing of this
7 videoconference deposition is not waived, and the
8 taking of this videoconference deposition concluded
9 at 2:11 p.m.)
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VIDEOCONFERENCE DEPOSITION ERRATA SHEET

Our Assignment No. J5562519

Case Caption: Fair Fight Action, et al., v.
Raffensperger, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Videoconference Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the VIDEOCONFERENCE DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

JANET THORNTON, Ph.D.

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May 22, 2020

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CERTIFICATE OF REPORTER

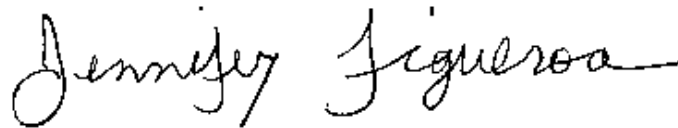
STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Jennifer Figueroa, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing videoconference deposition, Pages 1 through 88; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 28th day of May, 2020.



Jennifer Figueroa, RPR

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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Jennifer Figueroa, Registered Professional
Reporter, Notary Public, State of Florida, certify that
JANET THORNTON, Ph.D., appeared remotely via
videoconference before me on the 22nd day of May, 2020,
and was duly sworn.

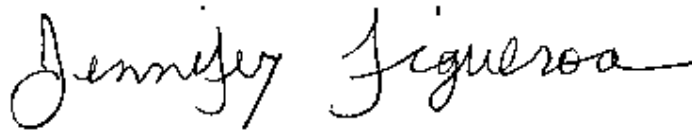
WITNESS my hand and official seal this 28th
day of May, 2020.

Identification:

Personally known ☐ or produced identification ☒.

Type of identification produced:

Florida driver's license.



Jennifer Figueroa, RPR
Notary Public, State of Florida
Commission No.: GG 071120
Commission Expires: 03/02/2021

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